Supreme Court of the United States.

No. 563.—October Term, 1903.

Henry C. Pettit, United States Marshal for the District of Indiana, Appellant, *vs.* Thomas Walshe. } On appeal from the Circuit Court of the United States for the District of Indiana.

[May 2d 1904.]

Mr. Justice Harlan delivered the opinion of the Court.

This is a case of extradition. It presents the question whether a Commissioner specially appointed by a court of the United States under and in execution of statutes enacted to give effect to treaty stipulations for the apprehension and delivery of offenders, can issue a warrant for the arrest of an alleged criminal which may be executed by a marshal of the United States, within his District, in a State other than the one in which the Commissioner has his office. It also presents the question whether a person, arrested under such a warrant, can be lawfully taken beyond the State, in which he was found, and delivered in another State before the officer who issued the warrant of arrest, without any preliminary examination in the former State as to the criminality of the charge against him.

By the 10th article of the Treaty between the United States and Great Britain, concluded August 9th 1842, it was provided that upon mutual requisitions by them, or their ministers, officers, or authorities, respectively made, they shall "deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum, or shall be found, within the territories of the other." But by the same article it was provided that "this shall only be done upon such evidence of criminality as, *according to the laws of the place where the fugitive or person so charged shall be found*, would justify his apprehension and commitment for trial, if the crime or offence had *there* been committed; and the respective judges and other magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be

judge or magistrate to certify the same to the proper executive authority, deemed sufficient to sustain the charge, it shall be the duty of the examining that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition, and receives the fugitive." 8 *Stat.* 572, 576.

A supplementary treaty between the same countries, concluded July 12th 1889, provided for the extradition for certain crimes not specified in the 10th Article of the treaty of 1842, and "punishable by the laws of both countries"; and, also, declared that the provisions of the above article "shall apply to persons convicted of the crimes therein respectively named and specified, whose sentence therefor shall not have been executed. In case of a criminal alleged to have been convicted of the crime for which his surrender is asked, a copy of the record of the conviction, and of the sentence of the court before which such conviction took place, duly authenticated, shall be produced, together with the evidence proving that the prisoner is the person to whom such sentence refers." 26 *Stat.* 1508, 1510.

By an act of Congress, approved August 12th 1848, *c.* 167, and entitled "An act for giving effect to certain treaty stipulations between this and foreign governments for the apprehension and delivering up of certain offenders," it is provided (§ 1): "That in all cases in which there now exists, or hereafter may exist, any treaty or convention for extradition between the Government of the United States and any foreign government, it shall and may be lawful for any of the justices of the Supreme Court or judges of the several District Courts of the United States—and the judges of the several State courts, and the commissioners *authorized so to do* by any of the courts of the United States, are hereby severally vested with power, jurisdiction, and authority, upon complaint made under oath or affirmation, charging any person found within the limits of any State, district, or territory, with having committed within the jurisdiction of any such foreign government any of the crimes enumerated or provided for by any such treaty or convention—to issue his warrant for the apprehension of the person so charged, that he may be brought before such judge or commissioner, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient by him to sustain the charge under the provisions of the proper treaty or convention, it it shall be his duty to certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of said treaty or convention; and it shall be the duty of the said judge or commissioner to issue his warrant for the commitment of the person so charged

to the proper goal, there to remain until such surrender shall be made." "§ 6. That it shall be lawful for the courts of the United States, or any of them, *to authorize any person or persons to act as a Commissioner or Commissioners,* under the provisions of this act; and the doings of such person or persons so authorized, in pursuance of any of the provisions aforesaid, shall be good and available to all intents and purposes whatever." 9 *Stat.* 302.

And by section 5270 of the Revised Statutes—omitting therefrom the proviso added thereto by the act of June 6th 1900, *c.* 793, 31 *Stat.* 656, which applies only to crimes committed in a foreign country or territory "occupied by or under the control of the United States"—it is provided: "Whenever there is a treaty or convention for extradition between the Government of the United States and any foreign government, any justice of the Supreme Court, circuit judge, district judge, commissioner, *authorized so to do by any of the courts of the United States,* or judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within the limits of any State, District, or Territory, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or commissioner, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made." See also § 5273.

In the Sundry Civil Appropriation act of August 18th 1894 will be found the following clause: "*Provided,* That it shall be the duty of the marshal, his deputy, or other officer, who may arrest a person charged with any crime or offence, to take the defendant before the nearest Circuit Court commissioner or the nearest judicial officer having jurisdiction under existing laws for a hearing, commitment, or taking bail for trial, and the officer or magistrate issuing the warrant shall attach thereto a certified copy of the complaint, and upon the arrest of the accused, the return of the warrant, with a copy of the complaint attached, shall confer jurisdiction upon such officer as fully as if the complaint had originally been made before him, and no mileage shall be allowed any officer violating the provisions hereof." 28 *Stat.* 416.

Under these treaty and statutory provisions, complaint on oath was made before John A. Shields—a Commissioner appointed by the District Court of the United States for the Southern District of New York *to execute the above act of August 12th 1848, and the several acts amendatory thereof*—that one James Lynchehaun was convicted, in a court of Great Britain, of the crime of having feloniously and unlawfully wounded one Agnes McDonnell, with intent thereby, feloniously and with malice aforethought, to kill and murder said McDonnell; that the accused was sentenced to be kept in penal servitude for his natural life; that in execution of such sentence he was committed to a convict prison in Queens County, Ireland, had escaped therefrom, and was at large; and that he was a fugitive from the justice of the Kingdom of Great Britain and Ireland, and within the territory of the United States. It is admitted that the present appellee is the person referred to in the warrant as James Lynchehaun.

Upon that complaint, Commissioner Shields, in his capacity as a Commissioner appointed by a court of the United States to execute the laws relating to the extradition of fugitives from the justice of foreign countries, issued on the 6th day of June 1903, in the name of the President, a warrant addressed "to any marshal of the United States, to the deputies of any such marshal, or any or either of them," commanding that the accused be forthwith taken and brought before him, *at his office, in the city of New York*, in order that the evidence as to his criminality be heard and considered, and if deemed sufficient to sustain the charge, that the same might be certified, together with a copy of all the proceedings, to the Secretary of State, in order that a warrant might be issued for the surrender of the accused pursuant to the above treaty.

This warrant having been placed for execution in the hands of the appellant, as Marshal of the United States for the District of Indiana, he arrested the accused in that State. Thereupon the latter filed his application for a writ of *habeas corpus* in the Circuit Court of the United States for that District, alleging that his detention was in violation of the Constitution, treaties and laws of the United States. The writ was issued, and the Marshal justified his action under the warrant issued by Commissioner Shields. Referring to the warrant and averring its due service upon the accused, the Marshal's return stated that the warrant was "regular, legal, valid and sufficient in law in all respects to legally justify and warrant the arrest and detention of petitioner, and, under the laws of the United States, it was and is the duty of this defendant to arrest and detain said petitioner, *and deliver him as commanded by said writ for hearing before Commissioner Shields, in New York city;* that said writ runs for service in the State of Indiana, although issued by a commissioner of the United States for the Southern District of New York, by reason of its being a writ in extradition; that

defendant is informed and believes, and therefore states the fact to be, that petitioner is the identical person commanded to be arrested by said warrant as James Lynchehaun; . . . and that it is by virtue and authority solely of said warrant that defendant holds and detains petitioner; that defendant proposes, if not otherwise ordered by this honorable court, to obey, as United States marshal for the District of Indiana, the command of said warrant as set out therein, believing it to be his duty as said officer so to do."

The accused excepted to the Marshal's return for insufficiency in law, and the case was heard upon that exception. The court held the return to be insufficient; and the Marshal having indicated his purpose not to amend it, the accused was discharged upon the ground that the Commissioner in New York was without power to issue a warrant under which the Marshal for the District of Indiana could legally arrest the accused and deliver him before the court of that Commissioner in New York without a previous examination, before some proper officer in the State where he was found. *In re Walshe*, 125 *Fed. Rep.* 572.

The appellee contends that this case only involves a construction of certain acts of Congress, and that, therefore, this court is without jurisdiction to review the judgment on direct appeal from the Circuit Court. *Spreckels Sugar Refining Co.* v. *McClain*, 192 *U. S.* 397, 407. We do not concur in this view. The treaties of 1842 and 1889 are at the basis of this litigation, and no effective decision can be made of the controlling questions arising upon the appeal, without an examination of those treaties and a determination of the meaning and scope of some of their provisions. A case may be brought directly from a Circuit Court to this court if the *construction* of a treaty is therein drawn in question. 26 *Stat.* 826, *c.* 517, § 5. The petition for the writ of *habeas corpus* and the warrant under which the accused was arrested both refer to the treaty of 1842, and the court below properly, we think, proceeded on the ground that the determination of the questions involved in the case depended in part, at least, on the meaning of certain provisions of that treaty. The construction of the treaties was none the less drawn in question because it became necessary or appropriate for the court below also to construe the acts of Congress passed to carry their provisions into effect.

We now go to the merits of the case. It has been seen that the treaty of 1842 expressly provides, among other things, that a person charged with the crime of murder, committed within the jurisdiction of either country, and found within the territories of the other, shall be delivered up by the latter country; and that the provision shall apply in the case of one convicted of such a crime, but whose sentence has not been executed. But both countries stipulated in the treaty of 1842 that the alleged criminal shall be arrested and delivered up *only* upon such evi-

the court, to take the prisoner at once from the State in which he was found and deliver him in New York, before Commissioner Shields, without a hearing first had in the State of Indiana before some authorized officer or magistrate there sitting, as to the evidence of the criminality of the accused. The Circuit Court adjudged that the Marshal had no authority to hold the accused in custody for any such purpose; and, the Marshal declining to amend his return and not avowing his intention to take him before a judicial officer or magistrate in Indiana for purposes of hearing the evidence of criminality, the prisoner was properly discharged from the custody of that officer.

For the reasons above stated the judgment is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.